IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

RSA.No. 257 of 2007()

AS.16/2003 of SUB COURT, QUILANDY
OS.178/1999 of MUNSIFF COURT, QUILANDY

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: APPELLANTS - APPELLANTS - PLAINTIFFS

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1. ATHOLIKKAVU MEETHAL CHANDRAMATHI,
AGED 58 YEARS, SWASTHAM, RESIDING AT
PARAMOATH, P.O.CHEMANCHERRY.
CHEMANCHERRY AMSOM, THUVVAKKODE DESOM,
KOYILANDI TALUK.

2. SARASA, W/O.BALAKRISHNAN, SARASA NIVAS,
PANTHALAYANI AMSOM, DESOM.

3. ATHOLIKKAVUMEETHAL JANAKI,
D/O.CHEROOTTY, EDAKKARA AMSOM,
KOLAKKAD DESOM.

4. -DO- NARAYANI, -DO- -DO-

5. -DO- SUMATHI, D/O.CHEROOTTY, -DO-

6. ASARIKKANDI VILASINI,
D/O.CHEROOTTY, OLAVANNA AMSOM, DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.K.S.MENON

RESPONDENTS: RESPONDENTS - DEFENDANTS

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1. NALUKANOATHIL MEETHAL ANILKUMAR,
S/O.KUTTIKRISHNAN NAIR, TEACHER,
NEW PARAKKAL COLLEGE, RESIDING AT VARIYAM
VEETTIL, EDAKKARA AMSOM, KOLAKKAD DESOM,
KOYILANDY TALUK.

2. ATHOLIKKAVU MEETHAL GOPALAN, S/O.KORAN, ATHOLI

P.O.

3. NALUKANDATHILMEETHAL RAJAN, S/O.KANARAN, -DO-

4. VADAKKE KUYYILATHOTTUMEETHAL SREEDHARAN, S/O.

RAMANKUTTY, -DO- -DO-

5. NALUKANDATHILMEETHAL VELAYUDHAN, S/O.KANARAN, -DO- -DO-
6. THE SECRETARY, ATHOLI GRAMA PANCHAYATH, PO ATHOLI.
7. ATHOLIKAVU MEETHAL MADHAVAN, P.O.ATHOLI.
8. -DO- SOUMINI, D/O.CHEROOTTY, -DO- -DO-
9. P.V.KUTTIKRISHNAN NAIR,CONVENOR, PALAKKULAM OTTAMBALAM ROAD VIKASANA COMMITTEE, S/O.APPU NAIR, P.O. ATHOLI.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A NO. 257 OF 2007

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Dated this the 8th day of June, 2007

JUDGMENT

Supplemental plaintiffs 2 to 7 in O.S.178/1999 on the file of Munsiff Court, Koyilandy who were impleaded on the death of the original plaintiff are the appellants. Defendants are the respondents. Suit was instituted seeking a decree for permanent prohibitory injunction. The suit was instituted seeking a decree for permanent prohibitory injunction and for damages contending that plaint schedule property belongs to the plaintiff and he has been in possession and defendants including sixth defendant Panchayat trespassed into the property and committed damages by encroaching upon a portion of the plaint schedule property for the purpose of widening the road and therefore plaintiffs are entitled to get a decree for realisation of Rs.21,370/- as damages. Defendants resisted the suit contending that

Palakunnu Ottambalam road is having a 4 meter width and it was constructed by relinquishment of the property by the owners through which the road is passing and for the year 1998-99 the Panchayat road was tarred and the work was completed and defendants have not committed any trespass and is not liable to pay any damages.

2. Learned Munsiff framed the necessary issues. On the evidence of PW1 and Dws. 1 and 2 and Exts.A1 to A7 and Ext.B1 to B9 and C1 to C8, learned Munsiff held that plaintiffs are not entitled to the decree sought for. The suit was dismissed. Subsequently appellants challenged the decree and judgment before Sub Court, Koyilandy in A.S.16/2003. Learned Sub Judge on reappreciation of evidence, though deferred with the findings of the learned Munsiff that the suit is bad for non-compliance of Section 249 of Kerala Panchayat Raj Act, held that evidence establish that in O.S.41/1994 as evidenced by Ext.B1, final decree, plaint schedule property was divided and in such

circumstance, appellants are not entitled to the decree sought for. Learned Sub Judge found that the plan and the report which was filed in Ext.B2 and B3 in the final decree applications, establish that the road was in existence earlier and the width of the road is the same as recorded by the Commissioner in the present suit and in such circumstance, appellants are not entitled to the decree sought for. The appeal was dismissed. It is challenged in the Second Appeal.

2. Learned counsel appearing for appellants was heard.

3. The argument of learned counsel appearing for appellants was that even if a final decree is passed, till delivery of the respective shares allotted thereunder are taken by the respective sharers to their possession and till then property continues to be co-ownership property and one among the co-owners is entitled to file the suit. Learned counsel also argued that courts below should not have relied on the report and plan

submitted in another suit, even if it is in the final decree application, without examination of the Commissioner and in such circumstance, the report and plan should not have been relied on. Learned counsel also argued that evidence establish that sixth respondent Panchayat encroached upon a portion of the property belonging to appellants and other co-owners and widened the road and thereby caused damages and therefore a decree should have been granted. Learned counsel further argued that though the trial court dismissed the suit holding that the suit is bad for non compliance with the provisions of Section 249 of Kerala Panchayat Raj Act, learned Sub Judge found that a notice has been sent as provided under section 249 by one of the co-owners which is sufficient and in such circumstances, first Appellate Court should have granted the decree sought for.

4. On hearing learned counsel appearing for the appellants, I do not find any substantial question of law involved in the appeal. Though it

was argued that even after the final decree passed by the courts, the property continues to be a co-ownership property, Ext.B4 to B8 establish that the properties allotted to the respective sharers were already taken delivery. In such circumstance, appellants cannot be heard to contend that the property continued to be a co-ownership property. In view of the factual position, findings of the first Appellate Court that plaintiffs are not entitled to the decree sought for is perfectly correct.

5. Though it was argued that the report and plan submitted in another suit cannot be relied on without examination of the Commissioner, it cannot be disputed that the report and plan relied on by the courts below are the reports and plans marked in the final decree proceedings wherein the first plaintiff was also a party. Moreover under the final decree the report and plan were made part of the decree. In such circumstance, no formal evidence is necessary to admit the report and plan,

when they form part of the decree. When the report and plan forms part of that decree, they are also admissible without any evidence like the decree. Both the courts on the evidence found that appellants have not established that they have right to claim the reliefs. It is a factual finding which cannot be interfered in exercise of the powers of this court under section 100 of C.P.C. No substantial question of law is involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006